REA LAW JOURNAL

DEPARTMENT OF AGRICULTURE RURAL ELECTRIFICATION ADMINISTRATION

Vol. II, No. 3 March, 1940

COMMISSION JURISDICTION OVER RURAL ELECTRIC COOPERATIVES

The Utah Supreme Court recently held that a rural electric cooperative corporation engaged in the sale of energy exclusively to its own members is not subject to the jurisdiction of the Utah Public Service Commission. The statute granting the P.S.C. jurisdiction empowered the Commission to regulate every "public utility". A public utility in the statute is defined as an organization, rendering service "to the public generally", or "for public service." The holding of the court is that a nonprofit corporation organized on a cooperative basis serving its members only is not a "public utility" within this definition. Garkane Power Co. v. Public Service Commission of Utah, 8 U.S.L. Week. 720 (Utah, 1940).

In addition to the normal legal doctrine the court also pointed out that there was no need for the regulation of cooperatives. The court states that there is no conflict of interest in a cooperative between the consumer and the producer because both the consumer and the producer are one. If the rates charged are too high--the prime reason for the existence of a commission--no harm is done in the case of a cooperative because the surplus accumulating will be returned to the consumer on a pro rata basis with the result, in the final analysis, being the same as though a normal rate had been charged. For a case in accord see Inland Empire Rural Electrification, Inc. v. Department of Public Service, 199 Wash. 527, 92 P. (2d) 258 (1939), 1 REA L.J. 69.

Negligence - Damages

Defendant maintains and operates a high power electric system with poles and wires strung along the public highway. One of the wires of this system became dislodged from a crossarm and was permitted to remain sagging within 8½ feet of the ground. The plaintiff, riding on a horse, was engaged in driving a herd of cattle along the highway. Some of the cows became excited and ran in the wrong direction. In order to turn them back to the proper course the plaintiff spurred the horse forward, yelling at the cows and raising his hands to attract their attention and to wave them back in line. By raising his hand the plaintiff inadvertently came in contact with the sagging wire with the result that the plaintiff and the horse were thrown violently to the ground. The plaintiff obtained judgment of $32,500 rendered after a verdict of the jury. The defendants appeal. Held, judgment affirmed. Harmon v. San Joaquin Light and Power Corp., 98 Pac. 1064 (Cal. App. 1940).

Damages: The court felt that the damages were not excessive. The plaintiff sustained serious injuries and would probably have permanently impaired sight and hearing and possibly other permanent injuries.

Res ipsa loquitur: The lower court instructed the jury that the facts as demonstrated might bring into play the doctrine of res ipsa loquitur and that if so the defendant would have to produce sufficient evidence to "balance the presumption." This was held a proper instruction on the subject.

Contributory Negligence: The court held that the fact that the cattle were moving about and that the plaintiff was faced with the emergency of getting them back on their course was sufficient to exempt the plaintiff from contributory negligence as a matter of law.

Eminent Domain - Damages

A Nebraska public power district brought proceedings to establish, by right of eminent domain, a right of way and perpetual easement for an electric power transmission line across a 240 acre farm. The farm is admittedly worth between $85 and $100 an acre. There was conflicting testimony on what would be the value of the farm after the power line was built. The jury awarded damages of $1883. Held, new trial granted because the damages were excessive unless a remittitur was accepted reducing the damages to $1200. Pearse v. Loup River Public Power Dist., 290 N.W. 474 (Neb. 1940).

The court states that "the verdict ($1883) is much too high, for the plaintiffs retain all of their land except the few square feet of ground occupied by the . . . poles. They may cultivate their land as before, so far as these . . . poles do not interfere. * * * If there is difficulty in planting check-rowed corn along this narrow strip of land along the east fence occupied by these . . .(poles), perhaps other crops can be planted on this ground with much less annoyance and trouble."

Municipal Corporations - Power to Engage in Sale of Appliances.

It was held that a utilities district created by statute to acquire and operate public utilities within a city may also operate a retail store for the sale of appliances. Nelson-Johnson & Doudna v. Metropolitan Utilities Dist., 8 U.S.L. Week 656 (Neb. Sup. Ct., April 12, 1940).

The court states that the district is a municipal corporation and as such is engaged in the operation of a gas manufacturing plant. Further, that although the right to engage in the business of selling appliances was not expressly granted in the statute since it is intimately connected with and incidental to the sale and distribution of gas it may be carried on although not specifically authorized. Those objecting to this enterprise of the district argue that there is a rule of strict statutory construction governing the powers of governmental units such as districts. However, the court held that the district operated the system here in question in its proprietory capacity and that the strict rule of construction is not applicable.

Chattel Mortgages - Conflict of Laws

A executed a chattel mortgage of an automobile which was validly recorded in Missouri. The automobile was brought to Louisiana without the knowledge or consent of the mortgagee. The mortgagee brought an action to seize the automobile duly recorded in Louisiana. X intervened claiming to be the holder of a promissory note secured by mortgage of the automobile now situated in Louisiana. Held, judgment for the Louisiana mortgagee. General Motors Acceptance Corp. v. Nuss, 192 So. 248 (La. 1939).

This case presents a very interesting problem of chattel mortgage law. One line of authorities have advanced the proposition that where a mortgaged chattel is taken into a foreign jurisdiction without the consent of the owner, the foreign state has no jurisdiction to effect the mortgagee's title to the chattel unless it somehow obtains personal jurisdiction over the owner. See Beale, Jurisdiction Over Title of Absent Owner in a Chattel (1927) 40 Harv. L. Rev. 805; Note (1911) 24 Harv. L. Rev. 567. Whether it is a matter of jurisdiction

REA LAW JOURNAL

A review of that portion of the law important and interesting to attorneys working in the field of rural electrification.

Published Monthly

The Journal is informational only and should in no wise be interpreted as expressing the views of the Rural Electrification Administration or any division thereof.

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in a constitutional sense or not there is a certain amount of fairness involved in the principle that a state will not let its laws operate upon the property of an absent owner where such property is within that state without the consent of the owner. Thus, in almost every jurisdiction if property is brought into a state as a result of force or fraud upon the owner, it is not subject to levy in that state by creditors of the owner. Powell v. McKee, 4 La. Ann. 108 (1849); Sea-Gate Tire and Rubber Co. v. Moseley, 161 Okla. 256, 18 P. (2d) 276 (1933). When we turn to the problem presented by the instant case the general rule is that the rights of the mortgagee are protected even though the mortgage is not recorded in the second state. The recording statutes of the latter state are regarded "as speaking with respect to mortgages made within the state upon property there situated, and as having no reference to personalty brought within the state which is at the time incumbered with a valid lien created elsewhere." See Shapard v. Hynes, 104 Fed. 449, 453 (C.C.A. 8th, 1900). Occasionally courts, as in the instant case, refuse to follow this rule and follow strictly the doctrine that a mortgage is invalid as to third persons with respect to property inside the jurisdiction unless it has been recorded in that state. Union Securities Co. v. Adams, 33 Wyo. 45, 236 Pac. 513 (1925). For a thorough discussion of this problem see Goodrich, Conflict of Laws (2nd. ed. 1938) §§152-154.

RECENT STATUTES

Sec. 2, S. B. No. 52, enacted January 22, 1940 empowers the Virginia Conservation Commission, subject to the consent and approval of the Governor, to grant to any public service corporation an easement over and upon and across any lands or other property of any kind or character held by it or over which it has supervision or control. Are cooperatives organized under the Electric Cooperative Act public service corporations within the meaning of this statute?

Sec. 3693, Ch. 146, of the Virginia Code of 1936, defines a public service corporation as including all transmission, electric light, heat and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley or public highway, whether along, over or under the same, in a manner not permitted to the general public.

Cooperatives organized under the Electric Cooperative Act are public service corporations within the meaning of the Bill authorizing the grant of easements to public service corporations. They are transmission companies engaged in the light, heat and power business, and under Sec. 4057(11) are authorized to exercise all powers set forth in Sec. 3866, including the power of eminent domain and all other powers held by public service corporations. See also Chaps. 159 and 160, Virginia Code of 1936.

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Commission Jurisdiction Over Membership Certificates.

The California Attorney General has ruled that membership certificates or certificates of stock in a cooperative corporation organized under Cal. Civ. Code, Tit. 25, Part IV, Division 1, are not exempt from the California Corporate Securities Act. C.C. H., Stocks and Bonds Law Serv. para. 7779 (1940).

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1939 Session Laws for R. I., Colo., Del., Okla., Ore., Ga., S. D., Md., Calif., Me., Iowa, Vt.